

No. 11,622

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HILLIARD SANDERS, United States Pen-
itentiary, Alcatraz, California,

Appellant,

vs.

JAMES A. JOHNSTON, Warden, United
States Penitentiary, Alcatraz, Cali-
fornia,

Appellee.

BRIEF FOR APPELLEE.

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PAUL P. O'BRIEN,



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BRIEF FOR APPELLEE.

JURISDICTIONAL STATEMENT.

This is an appeal from an order of the United States District Court for the Northern District of California, hereinafter called "the Court below", denying appellant's petition for writ of habeas corpus and discharging the order to show cause. (Tr. 33, 34.) The Court below had jurisdiction of the habeas corpus proceedings under Title 28 U.S.C.A., Sections 451, 452 and 453. Jurisdiction to review the District Court's order denying the petition is conferred upon this Court by Title 28 U.S.C.A., Sections 463 and 225.

STATEMENT OF THE CASE.

The appellant, an inmate of the United States Penitentiary at Alcatraz, California, filed a petition for writ of habeas corpus in which he contended that his detention by the appellee, the Warden of the said penitentiary, was illegal because the written sentence and judgment under which he was held did not set forth the plea, recite the verdict or findings, or contain an adjudication of his guilt. (Tr. pp. 1 through 5.) Thereafter the Court below issued an order to show cause (Tr. p. 6) and the appellee filed a return to order to show cause in which he included as an exhibit, copies of the indictment, docket entries, sentence and judgment, commitment and Marshal's return on service of commitment, which documents were certified by the Clerk of the trial Court, and transfer order and record of Court commitment, certified by the Record Clerk of the said penitentiary. (Tr. pp. 7 through 27.) The appellant then filed a motion to strike the exhibits, on the ground that they were immaterial and irrelevant (Tr. p. 28), and likewise filed a traverse to return to order to show cause. (Tr. pp. 29 through 32.) The matter was then submitted and the Court below filed the following order denying the petition for writ of habeas corpus, discharging the order to show cause and denying appellant's motion to strike:

“The petitioner, an inmate of the United States Penitentiary at Alcatraz Island, California, has filed an application for writ of habeas corpus in which he alleges that his detention by the re-

spondent, the Warden of the said penitentiary, is invalid because the formal sentence and judgment under which he is presently confined does not contain a recital of the plea, the verdict of findings or an adjudication of guilt.

In response to the order to show cause, which was issued herein, respondent filed a return, to which was attached as 'Exhibit A', among other documents, a certified copy of the indictment in which the petitioner was charged before the District Court of the United States for the District of Maryland, with armed bank robbery, a certified copy of the docket entries, and the commitment, which indicated that subject had been convicted by a jury for the aforesaid offense and sentenced on February 5, 1942, to a term of twenty years imprisonment and to pay a fine of \$5,000. Petitioner thereafter filed a traverse to the return and a motion to strike respondent's Exhibit A on the ground that the said exhibit is immaterial to the issues of this case.

In

Demolbi v. U. S., 144 Fed. 363, 367,

on which respondent relies, the Court held that the entire record may be examined to determine the basis for prisoner's detention, citing

Pointer v. United States, 151 U. S. 396,
419, 14 Sup. Ct. 410, 38 L. Ed. 208.

Inasmuch as the pleadings in this case show sufficient grounds for the detention of the prisoner, there is no necessity for the issuance of a writ of habeas corpus and the holding of a hearing thereon.

Walker v. Johnston, 312 U. S. 275.

It is therefore ordered that petitioner's motion to strike respondent's Exhibit A be, and the same is hereby, denied, and it is further ordered that the petition for writ of habeas corpus herein be, and the same is hereby, denied, and the order to show cause heretofore issued, be, and the same is hereby, discharged.

Michael J. Roche,
United States District Judge."

From this order appellant now appeals to this Honorable Court. (Tr. p. 35.)

QUESTION.

Are the records of the trial Court sufficient to warrant appellee's detention of appellant?

CONTENTION OF APPELLEE.

The answer to the above question is: Yes.

ARGUMENT.

On the record before it, the Court below properly decided that the appellant was within the legal custody of the appellee. The appellant's attack on the written sentence and judgment fails because the missing elements are supplied by the other records of the trial Court, which appellee has made a part of his return.

In

Demolli v. U. S., 144 Fed. 363, 367,

cited by the Court below in its order denying the petition for writ of habeas corpus, it was held that the entire record may be examined to determine the basis for a prisoner's detention. Said the Circuit Court of Appeals for the Eighth Circuit:

“Objection is made to the sentence imposed on the defendant because it does not contain a formal adjudication of his guilt or specify the offense for which he was sentenced. If the judgment as entered were alone to be examined, the objection would be well taken. But the record of the proceedings in the District Court shows, with such appropriate connections, the return of the indictment by the grand jury, the indictment, itself, and every other step in the progress of the case, including the verdict and sentence, as to avoid any doubt respecting the offense of which the defendant was found guilty by the jury and on account of which sentence was imposed by the court. The case is in this respect within the ruling of *Pointer v. United States*, 151 U. S. 396, 419, 14 Sup. Ct. 410, 38 L. Ed. 208, where it was held that all parts of the record are to be interpreted together, effect being given to all, if possible, and that a deficiency at one place may be supplied by what appears in another. The objection is therefore not well taken.” (Tr. pp. 9-10.)

In

In re Edwards, 106 F. (2d) 537, 538,

a case similar to our case at bar, the Circuit Court of Appeals for the Eighth Circuit likewise held that habeas corpus would not lie where the sentence failed

to contain a statement of, or identification of, the crime for which sentence was entered. The Court said, citing

Pointer v. United States, 151 U. S. 396, 418;
White v. United States, 164 U. S. 100, 101, and
Demolli v. United States, *supra*,

“Appellant contends the sentence must contain such a statement as ‘for violating the Interstate Commerce Law, Title 18, Section 408, U.S.C.A.’

The order of sentence was as follows:

United States
 vs. No. 5705
 Courtney Edwards, alias Courtney Jett
 Order
 Entered June 29th, 1935

“This cause coming on for sentence, defendant, having nothing further to say, is sentenced to be committed to the custody of the Attorney General, or his authorized representative for confinement in an institution of the Penitentiary type for a period of Five Years, and he is now committed.

H. Church Ford, Judge.”

This order of sentence was, when considered in connection with the record of the case, sufficient.”

The pleadings in this case showing sufficient grounds for the detention of the appellant, the Court below was under no obligation to issue the writ and properly decided the merits of appellant’s petition on the order to show cause.

Walker v. Johnston, 312 U. S. 275, 284.

Finally appellant's contention that the order of the Court below, denying his motion to strike respondent's exhibits on the ground that they are immaterial and irrelevant, is completely without merit, in view of the cases above cited.

CONCLUSION.

In view of the foregoing, it is respectfully submitted that the order of the Court below in denying the petition for writ of habeas corpus is correct and should be affirmed.

Dated, San Francisco, California,
October 27, 1947.

Respectfully submitted,

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United States Attorney,

JOSEPH KARESH,
Assistant United States Attorney,

Attorneys for Appellee.

